



POLICE DEPARTMENT

October 9, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Lesley Pierluisse
Tax Registry No. 947352
7 Precinct
Disciplinary Case No. 2012-8447

The above-named member of the Department appeared before me on August 29, 2013, charged with the following:

1. Said Police Officer Lesley Pierluisse, while assigned to the 7th Precinct, on June 6, 2011, did wrongfully cause false entries to be made in Department records to wit: said Police Officer Pierluisse issued a summons indicating that the ULLI Restaurant Corporation sold alcohol to a minor under the age of 21 in violation of the Alcohol Beverage Control law, however, said police officer who is over the age of 21, purchased the alcohol.

P.G. 203-05, Page 1, Paragraph 5 PERFORMANCE ON DUTY - GENERAL
P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
PUBLIC CONTACT - PROHIBITED
CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Lesley Pierluisse, while assigned to the 7th Precinct, on June 6, 2011, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department to wit: said Police Officer Pierluisse consumed alcohol while on duty.

P.G. 203-10, Page 1, Paragraph 4 PUBLIC CONTACT - PROHIBITED
CONDUCT
GENERAL REGULATIONS

3. Said Police Officer Lesley Pierluisse, while assigned to the 7th Precinct, on or about July 26, 2011, knowing that a written instrument contained a false statement or false information, presented said written instrument to a public office or public servant

with the knowledge or belief that it would be filed with, registered or recorded or otherwise become a part of records of such public office or public servant.

P.G. 203-10, Page 1, Paragraph 4 – PUBLIC CONTACT - PROHIBITED
CONDUCT
GENERAL REGULATIONS

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through her counsel, entered a plea of Guilty to Specification Nos. 1 and 3 and testified in mitigation of the penalty. The Department moved to dismiss Specification No. 2. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pled Guilty, is found Guilty of Specification Nos. 1 and 3. The Department's motion to dismiss Specification No. 2 is granted.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a five-year member of the Department, has been assigned to the 7 Precinct for two and a half years, and is on full duty status. Prior to that Respondent was assigned to the Impact Unit in the Midtown South Precinct. Respondent has made approximately 82 arrests in her career.

She has pled guilty to wrongfully causing false entries to be made in Department records, and to submitting an affidavit containing a false statement to a public office with the knowledge or belief that it would be recorded. Respondent has never before been the

subject of Department charges and specifications. Since the Max Fish Bar incident, Respondent has not performed any undercover underage operations.

In June 2011, while Respondent was assigned to the 7 Precinct, she was recruited, along with an auxiliary officer, to the 1 Precinct to take part in underage operations at bars that had reputations for serving alcohol to minors. The Executive Officer for the 7 Precinct ran these operations, and the violations were adjudicated by the State Liquor Authority. Respondent received plainclothes training, and even though she was working undercover during these operations, she was never formally trained for undercover work. She worked undercover in these operations for 20 tours, and each of those nights she was assigned to five to ten bars. Eighteen-year-old Auxiliary Police Officer Limaury Rodriguez accompanied her because it would only be illegal for a bartender to serve an actual minor.

Respondent and Rodriguez were given detailed instructions about how to proceed during these underage operations. The lieutenant chose which bars Respondent and Rodriguez would investigate, and he stayed behind in the car with his driver while Respondent and Rodriguez entered the establishments. Upon returning to the stationhouse at the end of the night, Respondent was required to fill out a summons or other paperwork associated with the underage operations. After Respondent filled out the summonses, someone else had to serve them to each of the violating establishments so that Respondent's identity would not be revealed. A signed affidavit detailing the events that occurred was also required, and it had to be notarized a few weeks after the date of the event. The affidavit was sent out from the State Liquor Authority, and the captain or

lieutenant notified Respondent when the affidavit was ready to be reviewed and signed in front of a notary.

On the night of June 6, 2011, Max Fish Bar was one of the establishments that Respondent and Rodriguez were assigned to investigate while working undercover. According to Respondent, when the bouncer at the entrance of the bar asked Rodriguez for his ID, Rodriguez replied, "Oh, I left my ID at home, can I -- you know, I'm just taking my girl out for a drink, can you give me a break?", and the bouncer let him in. At some point, Rodriguez went to the bathroom or walked behind Respondent, and Respondent ordered two beers. Once Rodriguez came back, they pretended to put the beers to their mouths because they were instructed to not leave the bar right away. Respondent admitted that her lieutenant told her to order the drinks, even though the auxiliary was not near her, because it is illegal to serve a drink to a minor, regardless of whether or not the minor orders the drink himself. According to Respondent, the fact that the bouncer let the minor into the bar without showing ID and let him drink there was grounds for a summons, regardless of who asked for the drink. After they were finished with Max Fish Bar, Respondent and Rodriguez continued to investigate other locations. At the end of the day, Respondent filled out summonses regarding all the locations.

On July 26, 2011, Respondent signed and reviewed the affidavit describing the Max Fish Bar incident in front of a notary. [Department's Exhibit (DX) 1 is a copy of the affidavit signed by Respondent.] Respondent testified that her captain later notified her of an issue with the affidavit, and she called the State Liquor Authority. During that conversation, Respondent was informed that the video recorded at Max Fish Bar the night of July 6 did not match the facts listed in the signed affidavit. Respondent admitted that

she had mistakenly signed the affidavit that stated that Rodriguez paid for the Corona beer. She stated, "I messed up because all the affidavits are usually filled out the same way." She was then asked to come in to watch the video, but the State Liquor Authority took no action against her and told her that "it's not a big deal." In addition, Respondent was interviewed by the Manhattan District Attorney's (DA's) office and the Internal Affairs Bureau. The Manhattan DA's office took no action against her.

According to Respondent, the affidavit with inaccurate information was signed because she was being rushed to sign it. Respondent worked the midnight patrol shift, and the night she had to sign the affidavit, she had to rush back to the precinct early to have her signature notarized. While Respondent acknowledged that it was her responsibility to make sure that the affidavit was accurate, she now knows to always take her time filling out the required paperwork in the future, even if she is being rushed. Respondent also testified that the only time that she had ordered the beer instead of Rodriguez was at Max Fish Bar.

On cross-examination, Respondent admitted that at the end of every patrol shift, the auxiliary officer fills out an affidavit that Respondent signs as a witness to indicate that she has reviewed it. [DX 2 is a copy of the Auxiliary Police Officer's affidavit.] In his affidavit, Rodriguez also inaccurately indicated that he ordered the beers. The night of the Max Fish Bar incident, Respondent reviewed Rodriguez's affidavit when they went back to the command after finishing the operation. Respondent testified that both times—the first time she signed Rodriguez's testimony on July 6 and the night she had her signature notarized—she was rushed by the lieutenant and the attorney at the State Liquor Authority. Respondent found out about the discrepancy in the affidavit in the

beginning of August, and she disclosed her mistake to the attorney for the Liquor Authority from her memory, since she only watched the video afterward. While the affidavit that Respondent signed on July 26, 2011 was in support of closing Max Fish Bar for having so many violations, she was not sure of the outcome of the summons.

Respondent had conducted three prior operations at Max Fish Bar, but could not remember if the bar failed or passed the operations on the prior occasions. That same night of the Max Fish Bar incident, Respondent and Rodriguez visited other establishments, and while some summonses were issued, Respondent could not recall if they were issued before or after the Max Fish Bar operation. At the other locations, Respondent and Rodriguez were instructed to take turns ordering the liquor.

Upon further questioning, Respondent confirmed that she had made a mistake in signing certain provisions of the auxiliary's affidavit. While Respondent walked into the bar with Rodriguez, the bartender accepted payment for the beers from Respondent, and not from Rodriguez, as was written in the affidavit.

Upon redirect examination, Respondent testified that once Rodriguez came back to the bar, they stayed at the bar in the area where they were served, and Rodriguez drank the beer in that area.

DISCUSSION

Respondent has pled guilty to two specifications in this case. The sole issue is penalty. The Department has recommended a penalty involving the loss of 30 vacation days and one year dismissal probation. Respondent's counsel has suggested a penalty of no more than the loss of vacation 20 days and no dismissal probation.

Counsel for Respondent materially and substantially understates the significance of the Respondent's misconduct.

The specification that was discussed most extensively during the trial of this case was Specification No. 3. That specification charges Respondent with presenting a written instrument that she knew contained false statements to a public office or public servant "with the knowledge or belief that it would be filed with, registered or recorded or otherwise become a part of records of such public office or public servant."

There is no question that Respondent signed an affidavit containing materially false statements. The affidavit was submitted by a city agency in an effort to close down a bar for selling an alcoholic beverage to a minor.

On June 6, 2011, Respondent was involved in an operation aimed at closing bars that violated the law. Respondent and an underage auxiliary police officer would enter a bar as a couple. Respondent was selected because she has a youthful appearance and could credibly pose as the girlfriend of an underage male.

The plan was that the minor would gain admission without having to show identification. He would then order and pay for alcoholic beverages.

Although we do not have an exact number of the bars visited by the team, Respondent claims that several bars were successfully visited on the night in question. Later that night the auxiliary officer prepared a report about the bar in question here, the Max Fish, which Respondent signed and verified (DX 2).

Sometime later, on July 26, 2011, an affidavit was prepared for Respondent's signature. As noted, the affidavit had materially false statements in that it indicated that an underage auxiliary officer had ordered and paid for the alcoholic beverages. The false

statements occurred because instead of the auxiliary officer ordering and paying for drinks, he stepped into the men's room shortly after they entered the bar. With the auxiliary in the men's room Respondent ordered and paid for the drinks when the server came around. Respondent is not underage.

The affidavit (DX 1) at issue in this case is in legal format. It has a heading which indicates that it is being submitted to the Supreme Court of the State of New York. It lists itself as involving the matter of "The City of New York against Ulli Rest. Corp, et al," (Ulli Restaurant Corp. is the formal name for the Max Fish Bar, something that is explained further in the document). It states in the heading that it is an AFFIDAVIT IN SUPPORT OF CLOSING ORDER (capitalization as in original). In paragraph 3, Respondent, as signatory, acknowledges that she understands this is an affidavit in support of a closing order. So the formality and significance of this document are clearly spelled out.

If that was not enough to alert Respondent to the significance of her signature on this document above the lines for that signature, in bold type which stands out from the other type on the page, there is a line which states that the document is being signed under the penalties of perjury. If ever that was not enough, the document was also sworn to and notarized.

The false statement came to light when the bar owner produced a video recording of the events in question which confirmed that Respondent and not the auxiliary police officer had ordered, received and paid for the drinks. The case against the bar was dismissed.

Several explanations were offered by Respondent in her effort to mitigate her culpability for this event. For instance, counsel points out that she immediately recalled that she had ordered the drinks in this bar and admitted the error. Whatever value that admission might have is more than offset by the fact that it occurred after the affidavit had been filed as part of a legal action and then after Respondent was confronted with a video that proved the falsity of the affidavit. Moreover, if she remembered that the facts of this bar were different than the others, there was all more reason she should not have signed the false document in the first place.

Respondent claims that she was rushed by her lieutenant when she was given the task of signing the affidavits. This excuse is without merit. Respondent's obligation was to sign a factually honest affidavit whatever impact that had on the time. In any event there is no reason to believe that it would take materially longer to refuse to sign a false affidavit than to sign it. It might cause problems in that one might then have to explain why the operational plan had not been followed in that bar, but that is different than causing delay.

It should be noted that the report prepared by the auxiliary officer was also false. Respondent acknowledges that she signed off on that false report. Again she claimed she was rushed. This is an explanation lacking in merit on its own and the fact that it was used twice makes it all the less believable.

The false report also establishes something else of significance: there was apparently no document prepared by the auxiliary officer or Respondent which accurately reflected what happened in that bar that night. This in fact brings us to Specification No. 1, another charge to which Respondent has pled guilty. That specification notes that the

same falsehood found in the other documents was in a summons issued by Respondent to the bar on the night of the incident, June 6, 2011. This constitutes another serious matter in and of itself. It is clear that if there had been no video recording the falsity of the statement it would likely not have provably come to light.

Counsel for Respondent also claims, in essence, that dismissal of the case against the Max Fish Bar was unnecessary as the bar had already violated the law when it permitted the underage auxiliary officer into the premises without insisting on his presenting a valid identification.

Rather than mitigating the circumstances, this fact underscores the seriousness of the misconduct as well as the lack of recognition of how serious the failure here was. Had Respondent notified the city attorney who handled that case of exactly what had happened in the bar, that attorney could have determined if there was enough evidence to proceed with the case or to schedule another visit to the bar by this or another team.

Instead the city attorney was confronted with a situation in which a false affidavit had been submitted as part of an apparent attempt to deceive the court. The city attorney had no alternative but to dismiss the case tainted by this false affidavit.

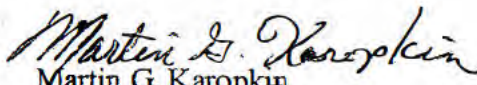
Members of the public have a right to expect that affidavits and other sworn statements made by law enforcement officers can be relied on for their truthfulness. Respondent's conduct damaged her own credibility but it also damaged the credibility of every officer in the Department. It also set a horrendous example for the underage auxiliary officer she was working with.

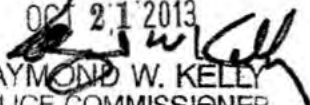
PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 8, 2008. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Considering the totality of the circumstances in this case the penalty suggested by the Department is not adequate to address the full measure of Respondent's misconduct and the apparent lack of insight into the seriousness of these matters. Consequently I recommend that Respondent be DISMISSED from the New York City Police Department, but that her dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time she remains on the force at the Police Commissioner's discretion. I further recommend that Respondent forfeit 30 vacation days and 10 suspension days.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner Trials

APPROVED
OCT 21 2013

RAYMOND W. KELLY
POLICE COMMISSIONER

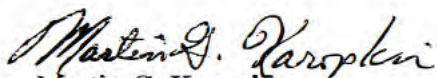
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER LESLEY PIERLUISSE
TAX REGISTRY NO. 947352
DISCIPLINARY CASE NO. 2012 8447

Respondent received an overall rating of 4.0 "Highly Competent" on her 2012 annual performance evaluation. She was rated 3.0 "Competent" in 2009 and 2010. [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.


Martin G. Karopkin
Deputy Commissioner – Trials